UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,855	08/29/2003	Kyung-Hun Jang	249/397	7411

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EXAMINER
TAYLOR, NICHOLAS R

ART UNIT	PAPER NUMBER
2141	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Advisory Action *Before the Filing of an Appeal Brief*	Application No.	Applicant(s)
	10/650,855	JANG ET AL.
	Examiner	Art Unit	
	Nicholas R. Taylor	2141	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>22 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>see attached.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

JASON CARDONE
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

1.   Claims 1-4, 15, and 17-20 were presented for examination and are rejected.

Response to Arguments

2.   Applicant's arguments filed January 22nd, 2008, have been fully considered but they are deemed not persuasive.

3.   In the remarks, applicant argued in substance that:

(A) The prior art of Huang does not teach a real-time multimedia generation rate calculated by a layer in the wireless terminal in accordance with information from another layer within the wireless terminal. Instead, Huang teaches a data rate set point based on a feedback report sent from a client to a server. If no report has been received within a time period, the server may gradually adjust the data rate set point, but the adjustment is not in accordance with the buffer state information and loss rate as recited in claim 1 (e.g., as in Huang paragraphs 0020-0026 and fig. 2). Furthermore, Huang's teaching discloses transmission buffer information generation techniques that exclude the use of estimated information.

As to point (A), Huang teaches a system that dynamically adjusts a real-time streaming multimedia data rate based on both bandwidth tracking and network buffer control (see paragraph 0013 and fig. 2). That is, the source of the data generation uses feedback information from within the network in addition to "information available to the server itself" (paragraph 0019). Thus, Huang does not rely solely on the feedback report data in calculating the data generation rate (i.e., the data rate set point). Furthermore, the claim language as currently presented does not preclude using network information from a feedback report as long as it is eventually supplied from a first layer to a second layer of the terminal.

In paragraphs 0023-0026, Huang discusses some of the specific variables used in calculating the real-time multimedia generation rate. Huang calculates the rate based on transmission buffer state information (e.g., paragraph 0022 and 0023 including the historical variables and feedback report information concerning the transmission buffer) and a multimedia data loss rate (e.g., paragraphs 0023-0026 where the data loss via throughput is used in the calculations; see also packet loss of paragraph 0022). Huang extracts data from different layers of the terminal architecture in order to calculate the proper generation rate (see, e.g., using data from different source data layers of the architecture to calculate the generation rate in paragraph 0023 and fig. 4).

As to the argument that Applicant's claimed invention specifically uses techniques to calculate the transmission buffer state information without using estimated information, any limitation that would preclude using estimated information is not present in the claimed language. Without discussing the merits as to whether the

Huang reference relies exclusively on estimated data or not, Applicant has failed to

present a persuasive argument as to why the independent claim language requires a

transmission buffer state calculation that relies on exact, defined variables. In showing

that estimated data is precluded, Applicant appears to rely on the following language in

the claims:

> "supplying transmission buffer, <u>through which the multimedia data is transmitted</u>,
>
> state information...calculating a real-time multimedia data generation rate based
>
> on the transmission buffer state information <u>and</u> the multimedia data loss rate..."
>
> (emphasis added)

The cited portions of the claim language appear to merely disclose the nature of

a transmission buffer (i.e., that data is transmitted through it) and that multimedia data

loss rate information is used in calculating a real-time multimedia generation rate.

Paragraph 0042 of the specification is also referenced; however, limitations from the

specification will not be read into the claims.

Claim Rejections - 35 USC § 102

4.   The rejections under 35 U.S.C. 102(e) as applied to claims 1-4, 15, and 17-20

are unchanged and are recited in the previous FINAL office action.

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Nicholas Taylor whose telephone number is (571) 272-

3889. The examiner can normally be reached on Monday-Friday, 8:00am to 5:30pm, with alternating Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NT 1-29-08

Nicholas Taylor
Examiner
Art Unit 2141